

January 25, 2018

Enrique Manzanilla  
Director, Superfund Division  
EPA Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

RE: Anaconda Copper Mine Site  
Review of Deferral Criteria

Dear Mr. Manzanilla:

As the United States Environmental Protection Agency (EPA) nears a decision on the Nevada Division of Environmental Protection's (NDEP) request for deferral of the Anaconda Copper Mine Site (Site) to NDEP regulatory oversight, NDEP provides this letter as an update to our original July 31, 2017 deferral request (attached).

NDEP and the Atlantic Richfield Company (ARC) have revised the draft June 2017 version of the Interim Administrative Order on Consent (IAOC) in response to questions and concerns from EPA and other interested parties. NDEP has recently distributed an updated January 2018 draft of the IAOC. The following sections are provided in addition to the July 31, 2017 letter, with additional explanation of how the current January 2018 version of the IAOC meets the deferral criteria outlined in EPA's April 19, 2017 letter to NDEP:

**1. Assurance that a CERCLA (Superfund) equivalent Remedial Investigation and Feasibility Study will be conducted at the Site**

EPA has determined that in order for Human Health Risk Assessments (HHRAs) conducted under deferral to be equivalent to that which would be conducted under CERCLA, assumptions about land use or presence of institutional controls should not be included in the risk assessment stage of the CERCLA process. NDEP also understands there is a concern that including such assumptions in the risk assessment may be used to avoid complete evaluation of potential exposure pathways and development of appropriate remedial action objectives.

NDEP has acknowledged that a baseline risk assessment performed in accordance with EPA guidance evaluates risks that may be present if no remediation or institutional controls were applied at a site. However, EPA guidance also directs that reasonable

assumptions about future land use, including those based on institutional controls, should be considered in risk assessment and the remedy selection process. As stated in EPA's May 25, 1995 OSWER Directive No. 9355.7-04 ("Land Use in CERCLA Remedy Selection Process"):

"EPA should gain an understanding of the reasonably anticipated future land uses at a particular Superfund site to perform the risk assessment and select the appropriate remedy." (p. 4)

"Future land use assumptions allow the baseline risk assessment and the feasibility study to focus on the development of practicable and cost-effective remedial alternatives, leading to site activities which are consistent with the reasonably anticipated future land use." (p. 6)

Sources and types of information that may aid EPA in determining the reasonably anticipated future land use include, but are not limited to: ...

- institutional controls currently in place
- Federal/state land use designation" ... (p. 5)

EPA's follow-up March 17, 2010 OSWER Directive 9355.7-19 on this issue ("Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites") confirms that:

"Another opportunity to consider the reasonably anticipated future land use is during the Superfund site baseline risk assessment." (p. 5)

Further, as noted previously, EPA performed qualitative, rather than quantitative, evaluations of exposure to on-site workers to drain-down fluids and tribal receptors to Arimetco Operable Unit 8 (OU-8) when completing the OU-8 human health risk assessment. NDEP has noted that this type of qualitative approach may be applicable to certain exposure pathways on other parts of the Site and that EPA's determination on whether to conduct a qualitative evaluation relied in part on reasonable assumptions related to access and institutional controls.

Therefore, NDEP considers it appropriate to consider institutional controls and groundwater use restrictions during performance of the human health risk assessment. Consideration of institutional controls and groundwater use restrictions will not be used as a basis for eliminating exposure scenarios from the baseline human health risk assessment, but they should be considered, as EPA did during completion of the OU-8 HHRA.

NDEP also understands there have been concerns expressed about whether the scope of the investigation and risk assessments at certain areas of the Site will be adequate. NDEP notes that the Remedial Investigation of several Operable Units have not been completed, and no final decisions have been made with respect to the necessary characterization to complete those investigations. Similarly, risk assessment workplans for Operable Units have not been finalized, and the final risk assessment workplans approved by NDEP will determine the scope of risk assessment to be conducted.

**2. Assurance that the remedy selected for implementation at the Site will be a CERCLA-protective cleanup and will be substantially similar to a CERCLA response**

EPA has determined that for the groundwater response under deferral to meet this criterion, the response must restore groundwater to its beneficial use, unless a waiver from Applicable or Relevant and Appropriate Requirements (ARARs) is justified. The scope of the IAOC extends through completion of a Feasibility Study for groundwater and not through remedy selection. This is typical of consent orders for completion of Remedial Investigation and Feasibility Studies (RI/FS). However, NDEP and ARC have modified Section 8 of the RI/FS Scope of Work attached to the IAOC to clearly require that development of Remedial Action Objectives for all media, including groundwater, be consistent with applicable sections of CERCLA and the National Contingency Plan (NCP). This includes those sections of the CERCLA and the NCP pertaining to restoration of groundwater to its beneficial use, evaluation of ARARs, including applicability of Maximum Contaminant Levels or Maximum Contaminant Level Goals to affected groundwater that is a current or potential source of drinking water.

**3. Assurance that appropriate enforcement mechanisms will be in place during the response activities at the site**

In addition to inclusion of applicable language from model EPA CERCLA settlement documents, including provision for stipulated penalties, work takeover provisions, financial assurance, and schedules for performance of work, NDEP has re-aligned internal resources to assign additional staff to the Bureau of Corrective Actions Abandoned Mine Lands program. NDEP will also contract necessary technical expertise from qualified professionals to enable it to perform independent technical review of all work conducted by ARC.

**4. Preservation of the rights of the federal Natural Resource Trustees**

On October 20, 2017, representatives of the Yerington Paiute Tribe (in its capacity as lead administrative trustee) transmitted a Memorandum of Agreement (MOA) to ARC relating to tolling of Natural Resource Trustee Natural Resource Damage claims. On January 10, 2018, ARC communicated its intent to execute the MOA to the Natural Resource Trustees along with other deferral documents and requested a final version for signature be provided.

#### **5. Assurance of support for Tribal involvement**

NDEP understands there have been concerns regarding the level of funding support for the Yerington Paiute Tribe (YPT) and the Walker River Paiute Tribe (WRPT) in the IAOC. Section 72.b of the IAOC provides for an initial level of funding for the YPT and WRPT, with provision for additional funding consistent with the future NDEP-approved Community Involvement and Participation Plan (CIPP).

EPA and NDEP have jointly developed and agreed upon proposed language for a Memorandum of Understanding (MOU) with the YPT and an MOU with WRPT. The proposed MOUs provide a framework for consultation, communication and coordination under deferral. These MOUs provide assurance of support for Tribal involvement, including appropriate recognition of roles and responsibilities for response actions conducted on Reservation land.

#### **6. Assurance of support for community involvement**

As with assurance of financial support for Tribal involvement, NDEP notes that Section 72.b of the IAOC provides for an initial level of funding for technical support to a community group, with provision for additional funding consistent with the future NDEP-approved CIPP.

The CIPP, including the schedule and opportunities for review and input by interested parties on work conducted by ARC, will be provided in draft to the public for comment prior to approval by NDEP. Going forward, NDEP will strike a balance between the overall goal of making adequate progress on the site cleanup in accordance with the cleanup schedule in the EPA NDEP Deferral Agreement and stakeholder interests in having adequate opportunity for involvement.

NDEP is committed to public engagement and to fully considering and being responsive to significant and valid concerns from the public.


Mr. Enrique Manzanilla

January 25, 2018

Page 5

I appreciate this opportunity to explain why NDEP has met the deferral criteria and we look forward to EPA's decision on NDEP's deferral request.

Sincerely,



Greg Lovato  
Administrator

Attachment: July 31, 2017 NDEP Deferral Request Letter

cc: Bradley Crowell, NV Department of Conservation and Natural Resources  
Brian Amme, Bureau of Land Management  
Jeffrey Page, Lyon County  
Dan Newell, City of Yerington  
Laurie A. Thom, Yerington Paiute Tribe  
Amber Torres, Walker River Paiute Tribe  
Brian Johnson, Atlantic Richfield Company  
Tom Patton, Singatse Peak Services